

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL DAVID WHITE,

Plaintiff,

No. CIV S-04-2276 GEB GGH P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's second amended complaint filed February 23, 2006. For the following reasons, the second amended complaint is dismissed.

On November 2, 2005, the court issued an order and findings and recommendations addressing the motion to dismiss filed on behalf of defendants Rhodes, Jett, Prosper, Schroers, Shannon and Ceaglio. The court recommended that the claims against defendants Prosper and Shannon be dismissed. The court dismissed with leave to amend plaintiff's claims against the remaining defendants that imposition of the R suffix caused plaintiff to suffer from increased risk of safety. The court found that plaintiff had failed to demonstrate that his increased risk of safety was caused by the R suffix. The court also dismissed plaintiff's

1 claims against defendants Ceaglio and Schroers because plaintiff had failed to link these  
2 defendants to the alleged deprivations. The court granted plaintiff thirty days to file an amended  
3 complaint.

4 Thirty days passed and plaintiff did not file an amended complaint. Accordingly,  
5 on January 19, 2006, the court recommended that the remaining claims against defendants  
6 Rhodes, Jett, Schroers and Ceaglio be dismissed. Plaintiff was granted twenty days to file  
7 objections but failed to do so.

8 On February 23, 2006, plaintiff filed the pending second amended complaint. The  
9 second amended complaint is dismissed for two reasons. Fed. R. Civ. P. 15(a). First, the second  
10 amended complaint is dismissed because it is untimely. Second, the second amended complaint  
11 is dismissed because it does not cure the pleading defects discussed in the November 2, 2005,  
12 order. The second amended complaint does not link plaintiff's increased risk of safety to the R  
13 suffix. The second amended complaint also fails to link defendants Ceaglio and Schroers to the  
14 alleged deprivations.

15 On March 2, 2006, plaintiff filed a summary judgment motion. This motion is  
16 premature because the court has recommended dismissal of the claims against defendants  
17 Rhodes, Jett, Schroers and Ceaglio. This motion is also premature because a motion to dismiss  
18 on behalf of the remaining defendants is pending.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's second amended complaint filed February 23, 2006, is dismissed;  
21 2. Plaintiff's March 2, 2006, summary judgment motion is vacated.

22 DATED: 3/22/06

23 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWES  
25 UNITED STATES MAGISTRATE JUDGE

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